

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant
8

FILED

MAR 11 2013

Board of Vocational Nursing
and Psychiatric Technicians

9 **BEFORE THE**
10 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. VN-2011-2222

13 **NATHAN JAMES FUNG**
14 **P.O. Box 53866**
Irvine, CA 92619

A C C U S A T I O N

15 **Vocational Nurse License No. VN 243910**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in
21 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric
22 Technicians, Department of Consumer Affairs.

23 2. On or about August 6, 2009, the Board of Vocational Nursing and Psychiatric
24 Technicians issued Vocational Nurse License Number VN 243910 to Nathan James Fung
25 (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to
26 the charges brought herein and will expire on December 31, 2014, unless renewed.

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive

1 evidence of the fact that the conviction occurred, but only of that fact, and the board
2 may inquire into the circumstances surrounding the commission of the crime in order
3 to fix the degree of discipline or to determine if the conviction is substantially related
4 to the qualifications, functions, and duties of the licensee in question.

5 As used in this section, "license" includes "certificate," "permit," "authority,"
6 and "registration."

7 9. Section 2878 of the Code states:

8 The Board may suspend or revoke a license issued under this chapter [the
9 Vocational Nursing Practice Act [(Bus. & Prof. Code, 2840, et seq.)] for any of the
10 following:

11 (a) Unprofessional conduct, which includes, but is not limited to, the
12 following:

13

14 (f) Conviction of a crime substantially related to the qualifications, functions,
15 and duties of a licensed vocational nurse, in which event the record of the conviction
16 shall be conclusive evidence of the conviction.

17

18 (j) The commission of any act involving dishonesty, when that action is related
19 to the duties and functions of the licensee.

20

21 10. Section 2878.6 of the Code states:

22 A plea or verdict of guilty or a conviction following a plea of nolo contendere
23 made to a charge substantially related to the qualifications, functions and duties of a
24 licensed vocational nurse is deemed to be a conviction within the meaning of this
25 article. The board may order the license suspended or revoked, or may decline to
26 issue a license, when the time for appeal has elapsed, or the judgment of conviction
27 has been affirmed on appeal or when an order granting probation is made suspending
28 the imposition of sentence, irrespective of a subsequent order under the provisions of
Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty
and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing
the accusation, information or indictment.

23 REGULATORY PROVISIONS

24 11. California Code of Regulations, title 16, section 2521, states:

25 For the purposes of denial, suspension, or revocation of a license pursuant to
26 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
27 crime or act shall be considered to be substantially related to the qualifications,
28 functions or duties of a licensed vocational nurse if to a substantial degree it
evidences present or potential unfitness of a licensed vocational nurse to perform the
functions authorized by his license in a manner consistent with the public health,

1 safety, or welfare. Such crimes or acts shall include but not be limited to those
2 involving the following:

3 (a) Procuring a license by fraud, misrepresentation, or mistake.

4 (b) A conviction of practicing medicine without a license in violation of
5 Chapter 5 of Division 2 of the Business and Professions Code.

6 (c) Violating or attempting to violate, directly or indirectly, or assisting in or
7 abetting the violation of, or conspiring to violate any provision or term of Chapter
8 6.5, Division 2 of the Business and Professions Code.

9 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,
10 whether a licensed physician or not, in the performance of or arranging for a violation
11 of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and
12 Professions Code.

13 (e) Conviction of a crime involving fiscal dishonesty.

14 (f) Any crime or act involving the sale, gift, administration, or furnishing of
15 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the
16 Business and Professions Code.

17 12. California Code of Regulations, title 16, section 2522 states:

18 When considering a) the denial of a license under Section 480 of the Business
19 and Professions Code, b) the suspension or revocation of a license on the ground that
20 a licensee has been convicted of a crime, or c) a petition for reinstatement of a license
21 under Section 2787.7 of the Business and Professions Code, the Board in evaluating
22 the rehabilitation of an individual and his or her present eligibility for a license, will
23 consider the following criteria:

24 (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.

25 (2) Actual or potential harm to the public.

26 (3) Actual or potential harm to any patient.

27 (4) Overall disciplinary record.

28 (5) Overall criminal actions taken by any federal, state or local agency or court.

(6) Prior warnings on record or prior remediation.

(7) Number and/or variety of current violations.

(8) Mitigation evidence.

(9) In case of a criminal conviction, compliance with terms of sentence and/or
court-ordered probation.

(10) Time passed since the act(s) or offense(s) occurred.

1 (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to
2 Penal Code section 1203.4.

3 (12) Cooperation with the Board and other law enforcement or regulatory
4 agencies.

5 (13) Other rehabilitation evidence.

6 COSTS

7 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
8 administrative law judge to direct a licentiate found to have committed a violation or violations of
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
11 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
12 included in a stipulated settlement.

13 FIRST CAUSE FOR DISCIPLINE

14 (April 16, 2012 Criminal Conviction for Petty Theft on November 14, 2011)

15 14. Respondent has subjected his license to disciplinary action under sections 490 and
16 2878, subdivision (f) of the Code in that he was convicted of crimes that are substantially related
17 to the qualifications, functions, and duties of a licensed vocational nurse. The circumstances are
18 as follows:

19 a. On or about April 16, 2012, in a criminal proceeding entitled *People of the*
20 *State of California v. Nathan James Fung*, in Orange County Superior Court, case number
21 12CM00115, Respondent was convicted on his plea of guilty of violating Penal Code section
22 484(a)-488, petty theft, a misdemeanor.

23 b. As a result of the conviction, on or about April 16, 2012, Respondent was
24 ordered to serve 30 days in the Orange County Jail, with credit for one day, to be served in the
25 CalTrans/Physical Labor program in lieu of jail. Respondent was granted three years informal
26 probation, and ordered to pay fines, fees, and restitution, and comply with the terms of probation,
27 including an order to stay away from the victim/department store.

28 c. The facts that led to the conviction are that on or about the afternoon of
November 14, 2011, an officer from the Tustin Police Department was at a Tustin department

1 store regarding a detained shoplifter in an unrelated case. While in the loss prevention office, the
2 officer and a loss prevention employee observed Respondent on closed circuit video surveillance
3 as he selected an electric toothbrush from a store display. Respondent then concealed the
4 toothbrush in the cargo pocket of his pants, and walk quickly towards the escalators. The police
5 officer and the loss prevention employee intercepted Respondent outside of the store.
6 Respondent granted the officer permission to search him; inside Respondent's pants pockets were
7 the electric toothbrush and a men's leather belt, with a total value of \$255.99. Respondent
8 admitted to the officer that he had stolen the merchandise from the store. Respondent was
9 arrested for shoplifting.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Acts Involving Dishonesty)**

12 15. Respondent has subjected his license to disciplinary action under section 2878,
13 subdivision (j) of the Code for unprofessional conduct in that on November 14, 2011, as
14 described in paragraph 13, above, Respondent committed acts of dishonesty when he stole
15 merchandise from a department store.

16 **DISCIPLINARY CONSIDERATIONS**

17 16. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
18 to California Code of Regulations, Title 16, section 2522, Complainant alleges:

19 a. Respondent was arrested at a Tustin department store on or about November 7,
20 2006, after he was observed on closed circuit video surveillance selecting several DVD's, slicing
21 through the wrappings of the DVD's with a knife he had in his jacket, and concealing the DVD's
22 in his pockets. Respondent was intercepted outside of the department store after he left without
23 paying for the merchandise. On or about July 18, 2007, in a criminal proceeding entitled *People*
24 *of the State of California v. Nathan James Fung*, in Orange County Superior Court, case number
25 07CM02652, Respondent was convicted on his plea of guilty of violating Penal Code section
26 484(a)-488, petty theft, a misdemeanor. Respondent was granted three years informal probation,
27 and ordered to pay fees, fines, and restitution.

28 ///

b. In a letter to Respondent dated July 21, 2009, an Enforcement Analyst from the Board advised Respondent that the Board was not going to deny his application for licensure at that time based on the fact that Respondent had complied with the terms of his probation, and that there had been no subsequent convictions. Respondent was admonished that as a licensed vocational nurse, he was responsible for being honest and ethical. Respondent was warned that future substantiated reports of similar behavior, or other violations of the law or violations of regulations governing the practice of a vocational nurse, would result in disciplinary action against Respondent's license.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Revoking or suspending Vocational Nurse License Number VN 243910, issued to Nathan James Fung;
2. Ordering Nathan James Fung to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: March 11, 2013.

TERESA BEYLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

SD2012704712